

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

* Case No. 24-MJ-00481 (CLP)

*

* Brooklyn, New York
* September 6, 2024

*

v.

*

JACOB ISRAEL WALDEN,

*

*

Defendant.

*

*

* * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR BOND REVOCATION HEARING
BEFORE THE HONORABLE JOSEPH A. MARUTOLLO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

LEONID SANDLAR, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

SAUL WARREN BIENENFELD, ESQ.
Bienenfeld Law
680 Central Avenue, Suite 108
Cedarhurst, NY 11516

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 (Proceedings commenced at 3:07 a.m.)

2 THE CLERK: (Delay in start of audio) -- of bail
3 conditions, case no. 24-MJ-481, United States vs. Jacob
4 Walden.

5 Counsel, starting with the government, please state
6 your appearances.

7 MR. SANDLAR: Good afternoon, Your Honor. Leonid
8 Sandlar for the United States.

9 MR. BIENENFELD: Saul Bienenfeld for Jacob Walden.
10 Good afternoon, Judge.

11 MS. CARLSON: Amanda Carlson, for Pretrial
12 Services, standing in for Tara Sarnelli.

13 THE COURT: Okay. Good afternoon, everyone.
14 Please be seated. And first, thanks for everyone's patience
15 as the last proceeding went a bit longer than expected.

16 So we're here today just to address some certain
17 issues of the conditions.

18 I guess let me start with the government and then
19 I'll ask Pretrial to speak on this and then I'll talk to the
20 defense counsel.

21 MR. SANDLAR: Good afternoon, Your Honor. Leonid
22 Sandlar for the United States.

23 Your Honor, we're here because Probation --
24 Pretrial Services submitted a memorandum outlining certain
25 concerns that they had with the defendant's conduct that

1 constituted violations, or potential violations, of his
2 conditions of release.

3 Since the memorandum came from Pretrial Services, I
4 was going to let Pretrial Services speak to the content of
5 the memorandum, Your Honor.

6 At this time the government does not seek detention
7 on the basis of the violations. However, the government is
8 concerned by the contents of the memorandum and certainly
9 reserves the right, if you will, to do that in the future.

10 At this time, absent direction otherwise from Your
11 Honor, I would turn it over to Pretrial Services.

12 THE COURT: Yes. And I have reviewed the
13 memorandum and I am thinking about remand right now, given
14 the egregiousness of these violations, but let me hear from
15 Pretrial.

16 MS. CARLSON: Good afternoon, Your Honor. Thank
17 you.

18 So as Your Honor stated, the memo did detail some
19 of the (indiscernible) here regarding the defendant's bail
20 conditions.

21 The first concern it names is that the defendant
22 made an unauthorized stop at a Verizon Wireless store for a
23 few moments.

24 Our concern with that is number one that -- is
25 failure to abide by his home detention condition and number

1 two, obviously, being at a Verizon store even for a short
2 amount of minutes, we're unsure what the defendant did during
3 that time frame, if there was access to unauthorized devices
4 during that time frame.

5 The second issue involves a review of cyber
6 monitoring data that shows the defendant using what's called
7 Smart Switch, which is an application that you can use to
8 transfer iPhone data to an Android. Being asked the
9 defendant was instructed to purchase an Android in order to
10 be compatible with our cyber monitoring software.

11 He did that and from what I understand he attempted
12 to transfer his data from his previous iPhone to his Android,
13 which is acceptable.

14 However, the issue here is the screen shots show
15 that there were a QR code, a scannable QR code that came up
16 on the cyber monitoring software that indicates another phone
17 was either used to scan that QR code or to be connected via
18 cable to that Android in order to switch the data from the
19 iPhone to the Android.

20 It is our understanding that defense counsel is in
21 possession of the defendant's previous iPhone, but the screen
22 shots here indicate that there may be another device that the
23 defendant has access to, which is, of course, of concern to
24 our office.

25 The second issue with the cyber monitoring software

1 is the conversations on WhatsApp that regarded sexual acts in
2 exchange for money.

3 The other issue with that is that Voicenotes were
4 mentioned. The quote exactly was should I not be typing this
5 only VN, which we could infer means Voicenote.

6 The issue with that is our cyber monitoring does
7 not have the capabilities to pick up the audio of a
8 Voicenote, so the implication that something should be done
9 via VoiceNote, as opposed to written message shows a way of
10 potentially circumventing the software.

11 So aside from the discussion of potential sexual
12 acts in exchange for money, the mention of Voicenotes is of
13 concern to our office.

14 And lastly we're really seeking some guidance from
15 the court in terms of the defendant's employment. The reason
16 for that is the cyber conditions involve us monitoring cyber
17 activity from the defendant, not only in his home personally
18 but also when he is at his place of employment.

19 The unique aspect of this case with this defendant
20 is that he is a part owner of his business. So in a normal
21 situation where someone is an employee of an office, they
22 usually are provided with some sort of internet policy that
23 states they can only use their internet at work for work
24 purposes, not personal reasons or any nefarious activity.

25 The concern here is that the defendant is a part

1 owner and could potentially create, edit, change, alter any
2 of those rules.

3 So we did conduct an employment visit. We did ask
4 the defendant's business partner if he would be willing to
5 allow us access to the company's router. He was not
6 comfortable with that. We can understand that, obviously.

7 The defendant's partner is not on supervision and
8 might potentially not want us intervening on his internet
9 use. So we are trying to be creative in terms of obtaining a
10 contract or some sort of policy or an affidavit from the
11 defendant's partner to show that his internet is being
12 monitored in some sort of way. However, that has not been
13 obtained.

14 We have been given some documentation from defense
15 counsel about cyber policies. However, the policies, in our
16 opinion, are incomplete. The policies look as if they could
17 have been Googled and snap shotted from Google and put on the
18 defendant's company letterhead and given to us, which is why
19 we requested the signed affidavit from his partner assuring
20 that he's not going to use more than the monitored devices
21 that we know about.

22 For clarification, he does have a monitored cell
23 phone and he does have a monitored laptop that he has been
24 using for some remote work right now.

25 So at this time we're not comfortable with allowing

1 him to be in the office five days a week where we know he has
2 access to other internet capable devices. We are trying to
3 be creative in terms of ways to get around that while still
4 monitoring these conditions.

5 However, we're not comfortable with any of the
6 avenues that we've been provided at this time.

7 THE COURT: All right. Thank you for that.

8 Let me hear from defense counsel.

9 MR. BIENENFELD: Thank you, Judge. Good afternoon.

10 There's a lot of confusion and misunderstanding and
11 I hope to explain everything and be clear about everything.

12 I do want to say that at no time did my client ever
13 violate any of his conditions.

14 The memo submitted by Pretrial Services probably
15 has a typo because it says that on August 6th he's seen at
16 Verizon. He had permission on August 6th.

17 There is an email from Pretrial Services, August
18 6th, 2024 at 10:01 a.m. that just asks me to confirm the time
19 that we should meet at Verizon and I said we would meet there
20 at 2 o'clock.

21 But I think that they're making a mistake. I think
22 they meant August 5th. So I want to clarify what happened on
23 August 5th, if I may, Judge.

24 If the judge wants to see the email, I certainly
25 have copies for the court. For everything that I'm talking

1 about I have copies for.

2 On August 5th --

3 THE COURT: Well, let me ask Pretrial Services,
4 what's the story there on that first point?

5 MS. CARLSON: I'm reviewing the notes, Your Honor,
6 just so that we can be --

7 THE COURT: And I appreciate it. Just for the
8 record, Pretrial -- I think, Tara Sarnelli is the Pretrial
9 Services officer who wrote this report. And Amanda is here
10 today. Amanda Carlson, sorry.

11 MS. CARLSON: Yes. Thank you, Your Honor.

12 I'm looking quickly, but it does look like defense
13 counsel is right. He was -- on 8/6 he was given permission
14 to go to Verizon, but on 8/5 is the day that we are referring
15 to as the unauthorized stop. So that is a typo. Defense
16 counsel is accurate.

17 THE COURT: Okay. So then -- so in light of that,
18 since he was permitted to go on August 6th, but he was there
19 on August 5th, what's the response from the plaintiff?

20 MR. BIENENFELD: So what happened on August 5th is
21 as follows.

22 He was in court because they had a problem with his
23 ankle monitor. He had the problem straightened out and then
24 there's confusion in terms of what to do next, because he
25 said I have to get my number ported, but my attorney has my

1 old phone. So they said oh, just have him send an email
2 requesting that you go to Verizon.

3 So I said okay, and this is me. I'm saying to my
4 client, okay, meet me at the Verizon store. I will bring your
5 phone and as soon as we get permission we'll go into the
6 store.

7 He's in the parking lot of Verizon. I send an email
8 on August 5th at 6:22 p.m. The email says I'd like to meet
9 my client at Verizon on Rockaway Turnpike in Lawrence, New
10 York to switch his phone number to the new phone. They close
11 at 7:00 p.m. Okay.

12 My client pulls into the parking lot. I had to go
13 into his car and we sit and talk for about ten, 15 minutes. I
14 then say gee, I didn't get a response back from them. Let me
15 see what's going on.

16 And I look at my phone and I see very nicely in
17 red, okay -- I can definitely give this to the court. It
18 says emails received after 4:00 p.m. will be considered as
19 received the following business day.

20 So I said listen, we're not going to be able to do
21 this now. You go home. I'm going to keep your phone. I'll
22 ask them in Verizon how to get it done and I'll let you know
23 once we get permission.

24 So I walk into Verizon. I ask them how it gets
25 done. They tell me come back with the phone and the next day

1 I say, okay, we have permission to come at 2:00 p.m.

2 We show up at 2:00 p.m. He forgets his license --

3 I think you forgot your license at home. Is that
4 it?

5 He forgot his license at home, so literally my
6 office and his house is ten minutes from the Verizon store,
7 maybe less probably.

8 He goes home. Gets his license, comes back. All
9 this could be seen on the monitor.

10 We sit with the Verizon people for about an hour
11 and a half and we can't get this done. We just can't get it
12 transferred. They say look, you need a special peck and
13 Verizon, go home and call them. Great.

14 So he goes home, he calls them, and he says okay,
15 there's something called Smart Switch, but you need to bring
16 my phone back to me because I need to get certain codes from
17 the phone in order to switch it back and all the apps. So I
18 said fine. I'll come at night.

19 So I came that first night. The next day I come,
20 right --

21 THE COURT: Well, let me just interrupt though.

22 I mean, in the report it says that during the
23 office visit the defendant requested a stop at a Verizon
24 Wireless store of the undersigned, and that refers to Officer
25 Sarnelli, denied the request and instructed him to submit a

1 detailed request for review.

2 So did that happen? Was there a detailed request
3 for review? I mean, I appreciate that he sent an email and
4 you coming back but --

5 MR. BIENENFELD: I don't even know what a detailed
6 request for review means. All I know is that there was
7 probably a miscommunication because he told me all -- he told
8 me, he said, Saul, my first name, all you need to do is send
9 them an email and as soon as they approve it, we can walk
10 into the store.

11 So I said, great, let's meet at the store. I'll
12 send them an email.

13 So I don't know what a detailed request for review
14 is but I think what it might mean -- is because in her email
15 to me, right, where she gives me permission to go to Verizon
16 and she says that she needs the documentation from Verizon
17 that the number was changed over and that she's going to need
18 the two emails, the passwords, the therapist contact
19 information and a list of all internet capable devices in the
20 residence, which she was provided with all that stuff.

21 So maybe she's referring to that, because that's in
22 the email that gives me permission to go to Verizon.

23 THE COURT: Well, let me just hear from Pretrial
24 Services.

25 MS. CARLSON: Yes, Your Honor.

1 So on August 5th the defendant did report to the
2 office and met with Officer Sarnelli. Then later on that
3 evening the defendant's attorney sent us an email at 6:22
4 p.m. asking to meet with his client at Verizon Wireless and
5 said that they close at 7:00 p.m.

6 So being as this email was received by our office
7 at 6:22 p.m. on the night of 8/5, we did not respond to that
8 email to provide the defendant permission to attend the
9 Verizon Wireless store before 7:00 p.m. that night.

10 So that's the email I assume he's referring to as
11 requesting permission. That was not responded to that
12 evening, therefore, he did not have permission to be there
13 that evening.

14 THE COURT: I mean, it doesn't --

15 MR. BIENENFELD: I can give you more background to
16 this as well.

17 THE COURT: I mean, it seems pretty straight
18 forward to me that there wasn't permission given and he was
19 there, right? So I appreciate that a request was made but
20 why don't you move onto the next violation then, or the
21 potential violation.

22 MR. BIENENFELD: So then what happens is we can't -
23 - we can download all the apps except for WhatsApp. It won't
24 download. We spent a couple of hours trying to figure it out
25 and then I realized, you know what? They probably didn't

1 turn on permission for WhatsApp. So we asked for permission
2 to turn on WhatsApp. It gets -- they claim that it was
3 turned on.

4 So I go back to his house with his other phone the
5 next -- it's Thursday night into Friday morning. I was there
6 until 3 o'clock in the morning. We were dealing with the
7 phone and we were dealing with the legal issue that's at
8 hand. And I was dealing with his family. His family came
9 over. They wanted to be reassured that everything would be
10 okay. I was talking to his brother. I met with his mother. I
11 was talking to his wife. Everyone was there. So it was a
12 whole night affair. And that's why you'll see the other QR
13 codes as well.

14 So I hope that clears up the Verizon issue and if
15 you have any questions, I certainly can answer them.

16 THE COURT: Candidly, it doesn't. I mean, it
17 clears it up in the sense that there's an explanation but I
18 mean, at bottom it still strikes me that I consider that a
19 violation of his conditions.

20 And then the second point -- you know, I appreciate
21 that there's this further confusion about the QR code, but,
22 again, it doesn't seem like anything is inconsistent with --
23 apart from the date being incorrect on August 6th, and the
24 report should have been August 5th, I don't hear anything, at
25 least right now, that indicates that there's actually

1 anything incorrect about this Pretrial report.

2 MR. BIENENFELD: Well, the only thing that's
3 incorrect is that the date, first of all, but he was told --
4 -- once he -- what happens is he had to buy a phone, leave it
5 at Pretrial Services so they could put their software on it,
6 right. Come back, pick up the phone and when he picked up
7 the phone he says now I have to go and port the number. And
8 he believes he was told okay, go to Verizon and port the
9 number. But you need your attorney to get permission.

10 So I figured, okay, I'll get permission. I didn't
11 know at that point -- this is the five days after arraignment
12 that it's a 24 to 48 hour process. I didn't know that, quite
13 frankly.

14 So I said fine. I'll send the email and get
15 permission but we didn't get permission so we didn't go into
16 the store.

17 So he was told that he could go to Verizon to port
18 the number, and he should go to Verizon to port the number.
19 They actually wanted him to have only one number. All right.
20 That he should go to Verizon.

21 And now Officer Sarnelli's saying I never said
22 that. And I understand that she's said I never said that.
23 But his view was go, but you need permission, so have your
24 attorney write me an email. All right. And that's where the
25 confusion I think is.

1 THE COURT: So let's move on to the August 16th --

2 MR. BIENENFELD: Okay. So August 16th, all right,
3 I have an affidavit. It is not notarized because the person
4 that signed it lives in Florida and I only had like 12 hours
5 notice to get this done.

6 I have a redacted version and a regular version for
7 the court to see. Okay. This is from the person -- her
8 name, I'm going to call her BB in the court. I don't want to
9 give her name. But it is in the affidavit that is
10 unredacted.

11 She is a recovering sexaholic, much like my client.
12 They met in recovery. My client was alone that weekend and
13 reached out to her for recovery purposes. Only for recovery
14 purposes.

15 And he said I'd like you to come over and spend
16 time with me. And she said I can't come over to spend time
17 with you but I'm so concerned about you that I will send a
18 friend over.

19 And he said great, I'll pay the friend \$500 to come
20 over. I'm so desperate for company.

21 But there was nothing in those emails, and I took a
22 look at it, there's nothing there that suggests that there's
23 money in exchange for sex.

24 Now BB is --

25 THE COURT: What about --

1 MR. BIENENFELD: -- 31 years old.

2 THE COURT: I'm sorry. What about -- didn't you
3 just say -- I'm sorry. You said a few moments ago about
4 \$500. Can you repeat that?

5 MR. BIENENFELD: Yes. So he offered whoever he's
6 going to send over \$500 to spend time with him. Not for sex,
7 to spend time with him because it's a Friday night. It's
8 inconveniencing somebody so you could come over. And I'll
9 pay you \$500 to spend time with me. Nothing -- there's no
10 conversation there about sex.

11 MS. CARLSON: Your Honor, if I may?

12 THE COURT: Yes.

13 MS. CARLSON: I do have a screen shot of the
14 conversation that I did provide to the U.S. Attorney's Office
15 and to defense counsel if you would like to review it.

16 THE COURT: Yes, I would. I'm sorry, defense
17 counsel. I know I cut you off.

18 MR. BIENENFELD: So I also have an affidavit from
19 BB, okay, and I can provide that both redacted and unredacted
20 format as well.

21 But it basically says who she is, what her phone
22 number is. That she's 31 years old. That she knows Mr.
23 Walden as Jake for the past five years. That they met in the
24 rooms of Sexaholics Anonymous and they're recovery friends
25 ever since.

1 And that on August 16th he reached out to her via
2 WhatsApp for recovery purposes. He was feeling lonely and
3 sad. He offered to pay me to come over to his house and keep
4 him company. I would never take money from a friend for such
5 a reason.

6 Additionally, there was no discussion about sex in
7 exchange for money. At Sexaholics we sometimes use dark
8 humor and joke about such things but Jake never offered money
9 in exchange for anything sexual.

10 I was not able to come over, but I understood that
11 a fellow recovering addict was in a tremendous amount of pain
12 and I did not want him to be alone that evening.

13 I therefore offered to ask my friends if they would
14 stay with him to keep him company. My friends are over the
15 age of 30.

16 They agreed and I was informed they had a good time
17 and no sexual activity took place.

18 I'm signing this affidavit of my own free will and
19 I will not -- I was not offered anything in exchange for
20 doing so. I only ask that the court keep this information
21 confidential as I do not want my name and phone number in any
22 public records.

23 And she signed it and I did not get it notarized
24 because of the time frame.

25 THE COURT: All right. Any further response? And

1 also just for the record I'm looking into the documents that
2 are screen shots provided from Pretrial Services from August
3 16th.

4 And just to be clear, these screen shots, whose
5 text from these screen shots right here?

6 MS. CARLSON: The white screen shots are from
7 Bracca, if that's how you pronounce her name.

8 MR. BIENENFELD: BB.

9 THE COURT: BB. Okay.

10 So the white screen shots -- I'm just looking on
11 here on this printed out screen shot that was referenced in
12 the Pretrial memo about should I not be typing this only VN.
13 After that she allegedly says at 7:10 p.m. should I give her
14 your number. She said she's down to come. I told her you'd
15 give her \$500, LOL.

16 She wants to know if she can come with her friend
17 too, another girl, and there's also a comment about if she's
18 hooked up with married guys before. And yeah, just don't
19 pressure her into anything. She has her own sexual trauma.
20 Let her decide what she wants to do, especially I don't know
21 if she's hooked up with married guys before.

22 Okay. So I just want to note that for the record.

23 Anything further about this incident on August
24 16th?

25 MR. BIENENFELD: Just that this was totally

1 recovery related. He was alone. At that time he did not have
2 permission --

3 THE COURT: When you say recovery related --

4 MR. BIENENFELD: Recovery related. It was --

5 THE COURT: It was loneliness. That's the issue
6 here not --

7 MR. BIENENFELD: Loneliness is --

8 THE COURT: -- sexual activity.

9 MR. BIENENFELD: -- the biggest enemy of an addict.
10 It is the biggest enemy of an addict. It is the worst thing
11 for an addict to be alone. They say it's called HALT. I
12 think it's hungry, angry, lonely and tired. And people who
13 are addicts and know that they're addicts and feel lonely,
14 they go ahead and they reach out for company and they speak
15 to other addicts so that they won't be alone, so they don't
16 act out.

17 THE COURT: And just so I understand it, for the
18 record, the defendant's position here today is that this
19 exchange on August 16th was merely another person coming --
20 or two other women coming to his home to give company and
21 money was exchanged purely for physically being there and no
22 sexual activity occurred.

23 MR. BIENENFELD: I don't even know if money was
24 ever exchanged with them. It is certainly I think -- he
25 asked for it, but I don't know if it was exchanged.

1 But you should also note at this time that he
2 didn't have any access to Uber Eats or to those apps where
3 you could buy food.

4 THE COURT: So you're telling me that this text
5 exchange is about food?

6 MR. BIENENFELD: No, not at all. I'm just telling
7 you that he couldn't even get food at that point. So, you
8 know, you're lonely and you're hungry. I'm just saying --

9 THE COURT: Okay. All right. And let's hear about
10 the issue with defendant's employment and the internet access
11 there at Emerald Health Care.

12 MR. BIENENFELD: Okay. So he works for a company
13 called Emerald Health Care.

14 I had provided them with the contract from a
15 company called Global Tech Solutions. It is a contract that
16 -- I have a copy for the court. I provided them with every
17 device at the office. Okay.

18 And the contract is for cyber monitoring and I have
19 a separate email from an Akeva (ph) Ezzatopour, I'll spell if
20 for the record, E-Z-Z-A-T-O-P-O-U-R, who is the vice
21 president of Global Tech Solutions, and he says I'm attaching
22 a copy of what we block, okay.

23 And he writes Global Tech Solutions employs
24 something called Sonic Wall content filtering for Emerald
25 HCM. The following categories are blocked.

1 And among them are drugs, illegal drugs,
2 pornography, sex education, intimate apparel, swimsuits,
3 something called grogs (ph), nudism, alcohol, tobacco, adult
4 material content, everything that Pretrial Services would
5 want blocked is blocked. And they're not satisfied with
6 that.

7 There is a system in place to block all this
8 content already and they're satisfied with it.

9 THE COURT: What is the web monitoring that's in
10 place?

11 MR. BIENENFELD: Sonic Wall it's called. And by the
12 way, they know Sonic Wall's in place because when they took
13 his laptop to put their own software on it, they couldn't do
14 it. He had to turn off Sonic Wall in order to do it. So
15 that took another two, three days in order for him to get his
16 laptop back because they know it's in place. It's such a
17 powerful thing that they couldn't even put their own software
18 on it.

19 To ask someone's business partner to be a
20 babysitter is not proper. It's not proper for him to sign an
21 affidavit that states -- and here's what they want him to
22 sign. They want him to sign saying this: Mr. Walden will
23 not access any other internet capable devices while at work
24 other than his monitored laptop and cell phone.

25 How could it -- I mean think about a law firm. If

1 there's two lawyers in two different offices, how could one
2 monitor the other? It's impossible. How could you possibly
3 expect a business partner to sign something like that?

4 It has been over a month since he's been to the
5 office physically. The place is in -- I'm not saying
6 shambles, but the place needs leadership. And he needs to be
7 there, okay?

8 I have asked many times --

9 THE COURT: When you say he hasn't been there, --

10 MR. BIENENFELD: He hasn't physically been in the
11 office. There's 15 employees? There's 15 in the New York
12 office. There's 3,000 employees for Emerald Health Care.
13 There's 15 in the New York office, all right? The New York
14 office is literally five minutes from his house, okay?

15 The judge at arraignment said stationary employment
16 is approved. He can go ahead and work there. Everyone else
17 on monitoring is allowed to go to work. They're denying him
18 access when they have proof that -- and I can hand it up to
19 the court, they have proof that all the monitoring is taking
20 place. They have the contract and they have the proof from
21 the vice president that the monitoring is taking place.

22 I cannot get the partner to sign a letter that says
23 he's in charge of babysitting him. It's not going to happen.
24 It's not even fair to ask it, Judge.

25 THE COURT: Let me hear from Pretrial on that last

1 point. And also if -- from Pretrial's perspective, just to
2 confirm whether the defendant has actually physically been to
3 his employer.

4 MS. CARLSON: Your Honor, he has not physically
5 been to his employer. He has -- as I stated earlier he does
6 have a laptop that is monitored that was returned to him that
7 we understand, and we can see from our cyber review that he
8 is working remotely in some capacity.

9 We, of course, understand that he would like to be
10 in the office, being as he is part owner of this business and
11 we are not denying him to ever return to the employer.
12 However, we were charged with monitoring his internet use.

13 And as stated in this memo we already have some
14 concerns about unauthorized devices and his internet use.

15 The policies that defense counsel is referring to
16 that he has submitted to us were denied in part because one
17 of them was incomplete. It was only pages 16 through 18 of a
18 policy, not the complete policy.

19 The other that he is referring to in terms of
20 what's blocked on their network, it looks like it could
21 potentially just have been a snippet of a screen from
22 anywhere. It doesn't appear to be what a normal policy from
23 an employer, in terms of internet policy would look like.

24 We did ask the employer for access, as I stated
25 earlier, to the router, which he was not comfortable doing.

1 We understand that he's not under supervision, so we're
2 trying to be creative in terms of obtaining that affidavit
3 from him.

4 Frankly, the way that the conditions are worded say
5 that we can monitor any internet access that he has at his
6 place of business, a privately owned business, or within his
7 personal home.

8 We don't think it's reasonable to go into his place
9 of work and monitor 15 employee -- you know, employee
10 devices. So we're trying to be reasonable here while also
11 monitoring the conditions that the court has charged us with,
12 which is why we asked for that affidavit in order to have
13 further assurance that he is not using other devices.

14 MR. BIENENFELD: Can I hand up the exhibits --

15 THE COURT: Sure.

16 MR. BIENENFELD: -- regarding the monitoring.

17 THE COURT: And I have some thoughts here too. But
18 I do want to also hear from the government in response. But
19 I'm sorry. Pretrial did you have anything further on that
20 point?

21 MS. CARLSON: No, Your Honor.

22 THE COURT: Okay. Let me hear from the government.

23 MR. BIENENFELD: I just want to clear what I handed
24 up.

25 THE COURT: Go ahead.

1 MR. BIENENFELD: I'm sorry, Judge.

2 So you have the email from the vice president and
3 there's an attachment to it. So I printed out the attachment
4 that they're saying is just a screen shot. It's not just a
5 screen shot. It's on the Global Tech letterhead, okay, and he
6 writes that they're monitoring those devices -- they're
7 filtering and what the filter is, the Sonic Wall, and what
8 devices have a check mark is what's being filtered.

9 And you can see there's a whole bunch of stuff,
10 including pornography and nudity. Okay.

11 And then you have the contract, and contract is a
12 self-renewing contract. So I handed that up as well. And
13 you have a list of all the devices. I handed that up as well.
14 Those are the three things they asked for except -- in
15 addition to a notarized letter.

16 THE COURT: How does it work in terms of using, I
17 guess, a company laptop but on --

18 MR. BIENENFELD: They were all password protected
19 and the policy is you can't use someone else's laptop. But
20 everyone has their own password on their laptop.

21 THE COURT: And what about the home internet usage?
22 Is there any -- and I'm not as familiar with this as others,
23 but if you're on your home network, does that give you
24 certain benefits that you may not have on a company network
25 if you're physically in the office? Is there any

1 understanding of that?

2 MR. BIENENFELD: Yes. Because this is a nursing
3 care business, there's a lot of HIPAA regulations involved in
4 this.

5 So there are certain things that could only stay on
6 the computers in the office. Servers. That's the word. You
7 can't get -- anyone can't just get onto it. So he can't from
8 his house get onto the servers because of HIPAA violations.
9 It would be a HIPAA violation. All right.

10 And you have patient records there and you have
11 other records. You have to be in the office on that server
12 in order to see certain documents.

13 And for over a month he hasn't been able to do this
14 work because of this.

15 THE COURT: How has he not been able to do his
16 work? I mean, doesn't he have remote access?

17 MR. BIENENFELD: Remote access does not work the
18 same when it comes to these HIPAA insured documents.

19 But additionally, Judge, face-to-face time is so
20 much more important. I know that we went through a pandemic -
21 -

22 THE COURT: And just to be clear, what's preventing
23 him at this point -- just so I understand where things stand
24 right now. What's preventing him right now on Monday from
25 going to the office?

1 MR. BIENENFELD: He'll get violated. We'll be back
2 here Tuesday.

3 THE COURT: Yeah, but isn't -- correct me if I'm
4 wrong, but I believe under the -- Judge Bulsara's order,
5 right, he can go to the employer, right? So what -- let me
6 hear from Pretrial on that.

7 MS. CARLSON: Yes, that's correct, Your Honor. He
8 does have permission to be at his work. However, we have not
9 given him that permission because of the issue surrounding
10 whether or not we're able to monitor his internet effectively
11 --

12 THE COURT: Monitor the computer.

13 MS. CARLSON: -- at his employer.

14 THE COURT: Okay. Let me hear from the government.

15 MR. SANDLAR: Yes, Your Honor.

16 As you can see from the discussion, I think there's
17 a certain lack of trust perhaps that has arisen between the
18 defendant and Pretrial. In an ordinary case I think that
19 lack of trust could be overcome by a record of compliance, in
20 which case Pretrial usually is quite reasonable in making
21 accommodations.

22 I'm not sure, Your Honor, would agree to this, but
23 I wonder whether it would be useful to have another status
24 conference a week or two weeks from now to give Pretrial and
25 defense counsel, defendant, the opportunity to work out some

1 of these -- an impasse that I think it's maybe possible to
2 overcome.

3 THE COURT: Well, I -- let me tell you what I'm
4 thinking and candidly, I did review the transcript. And
5 Judge Bulsara did say very clearly if you violate a
6 condition, I, or another judge, could issue an arrest warrant
7 for your arrest. And that could lead to you being held
8 without bail for the rest of your case.

9 So I really want to emphasize that to the defendant
10 here, because this is not a joke, right? I mean, if there
11 are violations of the conditions, you will be held in
12 detention.

13 Hang on a second.

14 At this point I think there have been multiple
15 violations. My view, looking at this as I can under the Bail
16 Reform Act, I'm not going to detain you today, but I am going
17 to change some of the conditions, because some of these I
18 think are egregious.

19 Frankly, the discussion about what occurred on
20 August 16th seems to me to be -- it strikes me as fanciful
21 and I still am not convinced -- I appreciate that counsel got
22 an affidavit, but it's from an unidentified individual and
23 ultimately, as Pretrial noted, there's no way at this point
24 to confirm the ages of those two unknown females who came
25 there.

1 I appreciate that there are addiction issues at
2 play here, but that does not excuse what -- you know, all
3 evidence would seem to me to point to sexual acts in exchange
4 for money, which would be, you know, quite absurd given the
5 very serious underlying allegations here.

6 I mean, keep in mind, this is a case that
7 implicates the Adam Walsh Act. There's child pornography
8 images. This is a serious case and I really have to consider
9 the danger to the community that the defendant holds.

10 So I'm going to make a few changes to the
11 conditions. One --

12 MR. BIENENFELD: Sure.

13 THE COURT: I'm sorry. Go ahead.

14 MR. BIENENFELD: I'm sorry to interrupt and I
15 appreciate you're going to make some changes. But I just
16 want to point out that under 18 USC 3142, what the defendant
17 is charged with is not even part of C14 that says what he
18 would be excluded from.

19 There's --

20 THE COURT: No, but the nature and seriousness of
21 the danger to any person or of the community, if the
22 defendant is released, is part of that assessment.

23 MR. BIENENFELD: I understand. But he's charged
24 with 2252(a)(4)(B), which is not in that list. They
25 specifically removed that from the list to be part of the

1 Adam Walsh and the monitoring. It's not even there.

2 Now I understand you have full discretion of this
3 but it's not according to the law.

4 THE COURT: Well, he is charged with serious child
5 pornography claims here, right? I mean, so this is --

6 MR. BIENENFELD: And what he's charged with is not
7 part of 18 USC 3142(c)(4)(B). It's not part of it. It's
8 excluded.

9 THE COURT: Look, the conditions that Judge Bulsara
10 set remain, but you're correct in that this court does have
11 discretion to modify those conditions or hold the defendant
12 in detention if those conditions are violated.

13 In my view, there have been at least three to four
14 violations. I think the --

15 MR. BIENENFELD: Judge, there's no proof --

16 THE COURT: Well, again, I'd ask you stop
17 interrupting me, one. And then two, I found, in my view,
18 that there are these violations based on the evidence
19 presented to me by Pretrial and based on our discussion
20 today. So these are the condition changes I'm going to be
21 making.

22 One, the defendant shall not have any contact or
23 association with any individual under the age of 18,
24 including his own children, except when the minor's in the
25 presence of another adult, who's the parent or legal guardian

1 of the minor.

2 So that's a change from the prior conditions that
3 did not apply to him or his child.

4 So in other words, when he's with his children,
5 another adult needs to be present, based on these violations
6 and conditions.

7 Second, I am going to order that, as discussed with
8 Pretrial, there be a condition placed on restrictions on
9 visitors to his residence.

10 So no visitor should be permitted to go to his
11 residence, except for immediate family, parents, siblings,
12 children, cousins, unless pre-approved by Pretrial Services
13 or the court.

14 And then the third change I'll make in terms of the
15 conditions is that he should continue working remotely until
16 further order of the court, because I agree that it's not
17 clear -- I appreciate that there have been some documents
18 that were provided to me this afternoon, but telework remains
19 possible. His business partner is currently not comfortable
20 providing the requested information.

21 And I do want to give more time for the parties to
22 try to work this out. So I'm going to change -- amend the
23 conditions slightly. I am going to schedule another hearing
24 date and that could be -- you know, we can see where things
25 are. Defense counsel can revisit these conditions at that

1 point, and you know, if there's compliance and Pretrial's on
2 board.

3 So I'd like to schedule it for -- I can schedule it
4 for two weeks from today, if that works.

5 THE CLERK: September 20th.

6 THE COURT: Yes.

7 MR. BIENENFELD: Could we do it in the morning?

8 THE CLERK: At 11:00?

9 THE COURT: And I could just ask if Pretrial -- if
10 you could just update the conditions --

11 MR. BIENENFELD: Judge, he has no control over who
12 comes to his house. He has a wife and kids there, okay.
13 It's impossible -- unless you're going to allow him to move
14 to another house, it's impossible for him to control these
15 things.

16 Additionally --

17 THE COURT: I don't understand how that's possible.
18 I mean, he lives in a house --

19 MR. BIENENFELD: There's five kids at home.

20 THE COURT: He has five kids. Who else lives in the
21 home?

22 MR. BIENENFELD: His wife, five kids and the
23 housekeeper comes up once in a while.

24 THE COURT: And, look, again, unless pre-approved
25 by Pretrial Services, I'm not going to allow any visitors to

1 the residence.

2 We have a situation where there are two females --
3 I'm not sure of their age. No one -- you've indicated that
4 one said they're in the 30's. I don't know their age. There
5 are two individuals who came to their home.

6 In my view, the evidence suggests that this was
7 something related for a sexual act in exchange for money. I'm
8 not comfortable leaving the five children alone with the
9 defendant right now, given the circumstances and I'm not
10 comfortable just allowing the defendant to invite whoever he
11 wants.

12 If there's a need for someone for his employment or
13 another friend or something like that, he can go with
14 Pretrial Services. I'll otherwise allow an exception
15 automatically for parents, siblings and children.

16 So if a cousin comes over unexpected, that's fine.
17 He doesn't need to check with Pretrial Services.

18 MR. BIENENFELD: What about his attorney? What
19 about his rabbi?

20 THE COURT: I'll allow for -- I mean, the attorney
21 is fine.

22 MR. BIENENFELD: Clergy.

23 THE COURT: Clergy is fine. So I'll add that in
24 there as well. And obviously, Pretrial Services will be
25 reasonable. And I just said, if there is someone from his

1 employment that needs to come over, you know, his partner or
2 this other individual that was being discussed, his business
3 partner, you know, I'm not going to deny that.

4 But at least at this stage, you know, the options
5 here are becoming more and more limited because -- and what I
6 consider, there to be multiple violations.

7 MR. BIENENFELD: What about recovery people?

8 THE COURT: Well, again, I'm not sure what that
9 means exactly, but if there's some --

10 MR. BIENENFELD: People in Alcoholics Anonymous and
11 people in Sexaholics Anonymous --

12 THE COURT: Well --

13 MR. BIENENFELD: These meetings take place in his
14 house.

15 THE COURT: Well, he can get approval from Pretrial
16 Services. If there's going to be a large meeting at his house
17 of Sexaholic Anonymous, he can get approval first from
18 Pretrial Services, just as he will with anyone else in terms
19 of providing, you know, information about the whereabouts.

20 I mean, I just don't want a situation in which I am
21 -- there's a hearing two weeks from now and BB, who
22 apparently is in Sexaholics Anonymous, is coming over and
23 it's now part of a meeting. That --

24 MR. BIENENFELD: Well, she lives in Florida now.

25 THE COURT: That's fine. Again, he can have

1 visitors. I said he doesn't need to get approval for parents,
2 siblings, children. We'll add clergy and we'll add lawyer,
3 and co-workers from his current employment.

4 But everyone else should get approved from Pretrial
5 Services, or the court.

6 Mr. BIENENFELD: Now, Your Honor, Pretrial Services
7 is, for lack of a better word, upset with how many requests
8 I've been making.

9 So now you're asking me to make even more requests
10 on them.

11 THE COURT: I don't think Pretrial Services is
12 upset with the requests that -- this is part of their role.
13 This is a case where there's serious challenges --

14 MR. BIENENFELD: They've actually said that, Judge,
15 that we're making too many requests.

16 THE COURT: Look. Pretrial Services -- I'll let
17 Pretrial Services respond, but I almost know the answer
18 already. But I'll go ahead and let Pretrial Services
19 respond.

20 MS. CARLSON: Thank you, Your Honor.

21 It's not that Pretrial Services is upset with the
22 requests that are being made. However, the defendant is on
23 home detention, which is a strict condition and we do have
24 protocol in place, including that requests are to be made 48
25 hours in advance with details to our office.

1 We do have multiple defendants on location
2 monitoring who are also making requests. Therefore, we
3 cannot respond immediately to a request that's being made,
4 which is what the defense counsel here may be referring to.

5 MR. BIENENFELD: I'm referring to a request I made
6 two weeks ago about a funeral that they still haven't
7 responded to. I mean --

8 THE COURT: Look, again, I can't speak to that.
9 You can always come to court if there is an issue. Look, I
10 can't speak to what has or hasn't happened.

11 I will encourage Pretrial to obviously communicate
12 with defendant, but, again, I will -- and let me just ask
13 Felix, is there a new form that needs to be filled out or an
14 addendum, or can Pretrial work on that for the addendum?

15 MR. BIENENFELD: Judge, would the court consider
16 him going to another house?

17 THE COURT: Well, hang on just a second. Let me
18 just --

19 (Pause.)

20 THE COURT: I'm sorry. Go ahead, counsel. You
21 said you wanted to consider another house?

22 MR. BIENENFELD: I wanted to consider another house
23 that he has. Perhaps he should move into the house because
24 what's going to happen is if his wife has an emergency and
25 has to leave and he has to watch the kids, you just said he

1 can't do it. If his wife has company over, she can't have
2 company over.

3 THE COURT: I didn't say that, actually. I said if
4 his wife has company over he can talk to Pretrial Services.
5 I mean, you know, again, this is something where I appreciate
6 this is a bit of inconvenience, but --

7 MR. BIENENFELD: No. I'm --

8 THE COURT: The alternative here, just to be really
9 blunt about this, is if he can't meet these conditions, as
10 Judge Bulsara said at the first conference, he can go to MDC,
11 right? That is an option.

12 MR. BIENENFELD: I'm asking how the court wants him
13 to meet conditions. Someone knocks at the door, a friend of
14 his wife. I want to come in. I want to talk to you. I want to
15 have a cup of coffee with you. The answer is no, you can't
16 come in?

17 THE COURT: Yes, the answer is no, you can't come
18 in unless you talk to Pretrial Services first. If that
19 situation arises -- and look, if that happens regularly where
20 there's a neighbor that's constantly coming by, that can be
21 addressed with Pretrial Services and that person would be
22 added to the list.

23 But at this point, given where things stand, I'm
24 not comfortable having other conditions.

25 MR. BIENENFELD: And what if he goes outside when

1 the person's inside?

2 THE COURT: Well, again, I'm not sure where he's
3 going exactly.

4 MR. BIENENFELD: There's a side yard that he could
5 go to, that Pretrial Services already said he's allowed to go
6 to the side yard.

7 THE COURT: Well, what individuals are you
8 expecting here that -- I mean, just to get ahead of this,
9 right? I mean, are there people that are coming over that --
10 your wife has friends who constantly --

11 MR. BIENENFELD: All day long people come over.
12 All day long there's friends come over. All day long his
13 wife's friends come over.

14 THE COURT: Well, what specific friends? I mean,
15 we can add those to the list, if that's helpful. If it's
16 your wife's friend who's coming over every day, that could be
17 added to the list for Pretrial Services.

18 MR. BIENENFELD: It's the entire --

19 THE COURT: I'll note in the order that he -- you
20 know, again, that there will be no visitors to the residence
21 except for the immediate family, clergy, lawyers, and I'll
22 write this out in a moment, unless pre-approved by Pretrial
23 Services or the court, or as modified by Pretrial Services.

24 If you're finding that it's the same four or five
25 people that are coming over every day, then Pretrial Services

1 I'm sure will be reasonable and assuming that there are no
2 issues, they'll just be allowed to come in. He won't have to
3 get approval every time. But at least at this stage I'm not
4 comfortable doing otherwise.

5 So I'm just going to enter this order -- hang on. I
6 just want to write it on here so it's clear.

7 (Pause.)

8 MR. BIENENFELD: Can my client address the court?

9 THE COURT: Hang on just one second. I just want to
10 make sure I'm not missing anything.

11 (Pause.)

12 THE COURT: Okay. I'm sorry. I'm sorry for the
13 delay. Go ahead, sir.

14 MR. BIENENFELD: I asked if my client could address
15 the court.

16 THE COURT: Yes. Although I will note -- I don't
17 know if counsel wants to talk about his Fifth Amendment
18 rights and the like with him or if he's been made aware of
19 them.

20 MR. BIENENFELD: Yes, he has. Anything you say can
21 be used against you.

22 THE COURT: Okay. So, again, if you want to speak
23 briefly.

24 THE DEFENDANT: First and foremost, Your Honor,
25 thank you for seeing us today. I --

1 THE COURT: I'm sorry to interrupt again. Just to
2 be really crystal clear for the record. I do note that any
3 statements -- and I know your counsel just said this, but I
4 just want to reiterate it. Any statements that you do make
5 now, you know, could be used against you either here or in
6 another criminal proceeding. I want to make sure you're aware
7 of your Fifth Amendment rights, you're not being pressured or
8 coerced into speaking. You don't have to speak, but if you'd
9 like to speak and if counsel's okay with him speaking, you're
10 welcome to speak.

11 THE DEFENDANT: Thank you, Your Honor.

12 I will not address the actions in order to be able
13 to have counsel represent them on those. All I will say is
14 this.

15 I'm trying my hardest right now to abide to every
16 single rule, to every single request that's being made. I was
17 asked to calm down, not make so many -- not send so many
18 emails. Not to ask for so many different things and my
19 emails stopped and I haven't sent one in two weeks.

20 I've listened to every single recommendation. I
21 have never -- if looked upon on the history of my bracelet, I
22 have never been anywhere outside of route that I wasn't
23 supposed to go at any time.

24 You can search my browser history. I have never
25 once ever been on any device that I've not been approved or

1 monitored. I have never once ever done any criminal activity
2 or broke any violations, even in the allegations of the
3 Verizon store. I did not go out of my way. I go in. I merely
4 stopped along the way home in the car and waited for
5 instructions. When I didn't get it I went home. I never re-
6 route. I never detoured. I never went anywhere that I wasn't
7 supposed to.

8 And there has been no proof of any criminal
9 activity whatsoever, or any violations that I have --
10 violations due to my conditions that -- I am asking you to
11 please consider for my wife, I have put her through enough
12 hell. I have put her through enough pain.

13 I'm asking for you to please consider for her to
14 monitor things as they were for a little bit longer and see
15 if it's amenable, I can agree not to go to work. It doesn't
16 affect her.

17 But the changes at home, including her not to be
18 able to go out to therapy or anything like that while -- when
19 I've got babies at home. I've never been at a risk to
20 children. It's been written in the transcripts. Even as
21 admitted by the U.S. prosecutor on day one that I've never
22 been a risk to children ever.

23 And for my wife not to be able to go outside, or to
24 go to therapy or for us not to be able to have support in
25 these very, very trying times, for her not to be able to have

1 friends. For my children not to be able to have family,
2 friends that could come over with their parents legally, I'm
3 asking please -- I'm begging you for the sake of my wife,
4 who's an innocent bystander and just five little children.
5 She's been through seven pregnancies. We've lost two
6 children. We've got a very busy life at home.

7 I have not violated anything with proof for sure
8 not, but I'm telling you I've not violated anything. I'm not
9 doing anything wrong. I'm asking to please work with me,
10 please. If there's already Adam Walsh conditions, you can
11 stop the statutory -- that's -- the lawyers will talk about
12 that. Fine.

13 I'm asking to please not make it worse or more
14 harsh. Give me another chance. For the sake of my wife, for
15 the sake of my children, for the sake of my family, they will
16 not -- she will not be able to cope with this.

17 She's a young mother. She's done nothing wrong.
18 I'm begging you to please, please see it in your heart to do
19 it for her.

20 I don't think anyone, including the government or
21 the Pretrial Services, are asking for me not to be able to
22 have any visitors or not be around my children.

23 The discussions had were whether or not we'll be
24 sending Voicenotes or whether or not we could have
25 employment. I'll be willing not to send Voicenotes. I'll be

1 willing not to go to work physically.

2 I'm asking to please reconsider not make any
3 changes at home. It will destroy my family.

4 THE COURT: So this is what I'm going to do, and
5 thank you for sharing that and I appreciate that -- you know,
6 from what I gather you are trying to go through therapy and I
7 understand that.

8 I am going to set this hearing for two weeks from
9 today. I am, however, going to modify the conditions, and
10 those can be revisited at that hearing. So this is not going
11 to necessarily be, you know, until this case is resolved.
12 This is at least until the next hearing.

13 I am going to modify the conditions. I'm going to
14 say, again, the defendant shall not have any contact or
15 association with any individual under the age of 18,
16 including his own children, except when the minor is in the
17 presence of another adult, who's the parent or legal guardian
18 of the minor.

19 Now that's the language that was in the original
20 proposed order. The language that's been removed is that --
21 the language that has been added back in is that it's
22 including his own children.

23 I note that I'll continue Judge Bulsara's
24 condition, however, that the defendant still may communicate
25 with his children via telephone or via electronic means. So

1 that portion of that section does not apply. And I'll have a
2 copy of this on the docket afterwards, just to be crystal
3 clear about it.

4 I'm going to add a 14th condition that no visitors
5 to the defendant's residence are permitted, except parents,
6 siblings, children, family members, attorneys, clergy, co-
7 workers or unless pre-approved by Pretrial Services or the
8 court, or as modified by Pretrial Services or the court.

9 I'll also add -- look, I think if there is ever a
10 doubt you should, through your counsel, contact Pretrial
11 Services. If there are issues and you're not getting
12 responses from defendant's perspective, you know, raise them
13 with the court. Certainly, obviously, raise them in two
14 weeks at the next hearing, but otherwise I'll set this next
15 hearing to see where things are for Friday, September 20th at
16 11:00.

17 I'll also note during that time, I didn't change
18 any conditions yet with respect to, you know, the computer
19 access at work, but it does appear, based upon what
20 defendant's handed me that there seems to be some avenue
21 towards a compromise. And I encourage defendant to work with
22 Pretrial Services and the government to try to work that out.

23 Okay. Anything further?

24 MR. SANDLAR: Nothing further, Your Honor.

25 MS. CARLSON: Your Honor, could I just raise two

1 things?

2 One, I would ask if Your Honor would consider the
3 change that we requested in terms of WhatsApp, that the
4 defendant may only use WhatsApp for business purposes and
5 that he may not use Voicenotes?

6 THE COURT: Yes, I will add that as well.

7 MR. BIENENFELD: He --

8 THE COURT: I apologize. I was going to add that
9 but go ahead, defense counsel.

10 MR. BIENENFELD: He needs WhatsApp for recovery
11 purposes. There are recovery chats on the WhatsApp as well.
12 The reason that they use WhatsApp is because you could have
13 100 people in recovery talking about an issue.

14 And he does communicate with his children through
15 WhatsApp as well, his wife through WhatsApp. He communicates
16 with me through WhatsApp and he communicates with his
17 synagogue through WhatsApp.

18 THE COURT: So let me just hear -- on WhatsApp at
19 least, what's Pretrial's response on those points?

20 MS. CARLSON: Yes, Your Honor.

21 Aside from the fact that the concerning
22 conversation that we noted earlier took place on WhatsApp,
23 WhatsApp is a bit tricky for us to monitor in terms of cyber
24 monitoring because WhatsApp is an encrypted application. It
25 is one way encrypted, meaning that only one side of the

1 conversation is logged and reported back to monitoring
2 systems.

3 The way that our monitoring system is able to view
4 it is through screen chats, as opposed to when you text
5 message someone we receive a realtime log of those text
6 messages and exactly what was said.

7 WhatsApp -- the screen shots do not -- it's not a
8 log it's just screen shots. Those screen shots could miss
9 things here and there, which is why we try to be reasonable
10 with WhatsApp. We understand people use it for international
11 communications or business.

12 However, when we see concerning activity on
13 WhatsApp, we do come to the court often and ask to limit it
14 because of the monitoring capabilities.

15 THE COURT: Let me hear from the government on the
16 WhatsApp issue.

17 MR. SANDLAR: Your Honor, we likely defer to
18 Probation's judgment. I think an exception could be made for
19 communications with counsel, although -- I'm sorry. I
20 apologize, Your Honor. In thinking about it further, there's
21 no reason for -- why counsel can't speak to his client by
22 phone.

23 MR. BIENENFELD: I also send documents to WhatsApp.

24 THE COURT: Is it possible to use email instead? I
25 mean, why does it have to be WhatsApp? Like an encrypted --

1 MR. BIENENFELD: I'm just saying that I use it as
2 well when I communicate with him. I can use another means if,
3 you know, if that's what you're insisting on. That's not the
4 issue. The issue is recovery and his family as well.

5 THE COURT: Well, again, I'm concerned about
6 allowing -- I encourage him to try to get better with his
7 situation but, you know, the statements that were made
8 earlier that this incident on August 16th was just to get
9 company, and this was someone who was in a Sexaholics
10 Anonymous and I don't want that to be an invitation to
11 suggest that well now, you know, if he's trying to get
12 recovery, he's trying to speak to people on WhatsApp and
13 suddenly now he wants them to come over or whatever, I think
14 that creates it seems like a host of other issues.

15 So let me just understand it. So Pretrial
16 Services' request is for what exactly?

17 MS. CARLSON: For the defendant to only use
18 WhatsApp for business employment purposes and that he not use
19 Voicenotes on any platform.

20 THE COURT: So what if we say defendant can only
21 use WhatsApp for business and legal purposes, I guess, right,
22 if for some reason they can't go through email and not use
23 Voicenotes you said?

24 MS. CARLSON: Yes, Your Honor.

25 MR. BIENENFELD: He can't control who sends him a

1 message on WhatsApp.

2 THE DEFENDANT: Your Honor, if I may?

3 THE COURT: Well, just hold on a second here.

4 Let me hear from Pretrial. I mean, presumably,
5 right -- well, how would you go about detecting that? I
6 don't want to make a situation where I'm setting himself up
7 to fail on a violation either.

8 MS. CARLSON: Yes, we understand that he can't
9 control who sends him messages on WhatsApp. Therefore, if
10 someone were to send him a message on WhatsApp and it went
11 unresponded to by the defendant, that would not be a
12 violation of his conditions. We would be monitoring that his
13 communications through WhatsApp are for business and legal
14 purposes only.

15 THE COURT: Look, I think I'm going to limit the
16 defendant's use of WhatsApp for business and legal purposes.
17 I'm going to order him not to use Voicenotes. And I'm going
18 to also order as modified by Pretrial Services.

19 If there are permutations that as you're thinking
20 about this that create really undue burdens for the
21 defendant, then that maybe could be revisited in two weeks.
22 So I'll just add number 15.

23 MR. BIENENFELD: Your Honor, under these conditions
24 I'm going to request that he move to another house, if that's
25 possible. Permission to be in that other house while they

1 have guests. The house is right down the block. If Pretrial
2 wants to visit it, they certainly can come over. This way
3 the house could be used by his wife and visitors and he could
4 get out of house, walk down the block to another house.

5 THE COURT: Let me hear from the government and
6 Pretrial on that.

7 MR. SANDLAR: Your Honor, the government has no
8 objection in principle. Our suggestion would be for Mr.
9 Bienenfeld to make an application to the court that spells
10 all this out, rather than doing it on the fly presently, that
11 provides the address of that house, that provides
12 Probations's position as it relates to the application and
13 that this all will be done in a slightly more concerted way.

14 Even during the course of the conference today
15 we've gone through multiple conditions. Defendant has
16 elected to speak on the record and make additional requests.
17 We've added additional conditions and this creates both a
18 record that's not as clear as it may be and doesn't seem to
19 be the best way to manage the defendant's request.

20 And so in the order -- in the interest of having a
21 clear record, a clear application and clear consideration
22 from Your Honor or the duty magistrate that day, a mere
23 suggestion to place this request in detail on the record and
24 then take it up at the status conference, or before the
25 status conference on the papers as the duty magistrate may

1 deem appropriate.

2 THE COURT: Okay. Any thoughts from Pretrial?

3 MS. CARLSON: Yes. To be frank, Your Honor, we
4 would prefer that he live in a residence away from his wife
5 and children with the restriction that he may not be alone
6 with his biological children now, because there are usually
7 instances where the wife may be out of the home and have to
8 attend to other things.

9 We think it would be better suited for him to be
10 elsewhere. However, we do agree with the government that we
11 would like some further information.

12 So we would ask if that is considered by Your Honor
13 that Pretrial be able to conduct a home assessment at this
14 new residence.

15 THE COURT: Yes. Look, at the conditions right
16 now, he is to maintain a residence -- or his current
17 residence, or a location approved by Pretrial Services.

18 So I think realistically if he wants to be in a
19 different home, assuming that Pretrial Services has no
20 concerns of that home, and just as Pretrial just noted, that
21 would seem to be able to resolve some of these issues.

22 I don't know if it even requires asking for any
23 further court action.

24 MR. BIENENFELD: Well, I understand that but what I
25 was asking for actually is two homes. So in other words, if

1 people would come to his house, he could leave, go to the
2 other house. That's what -- the request.

3 THE COURT: Well, I think at this point it's
4 getting a bit into the weeds and I don't want to set --
5 again, I don't want to set the defendant up for something
6 that's going to be cause him to fail.

7 I think there needs to be further discussion, as
8 Pretrial Services has already set out in the conditions.

9 I'll also ask -- and I'll put this on docket, I'll
10 also make sure this is typed into the docket in terms of
11 these new conditions, just so that there's no -- a lack of
12 clarity, just given where we are today.

13 I'll ask, Felix, if you could also make copies of
14 this order that we'll put on the docket.

15 All right. Anything further?

16 MR. BIENENFELD: Yes. I'm going to request that it
17 be sealed as well.

18 THE COURT: This order?

19 MR. BIENENFELD: Everything -- the order and the
20 transcript, yes.

21 THE COURT: I think it's -- let me hear from the
22 government on that, but what's your position?

23 MR. SANDLAR: I don't see a basis for sealing, Your
24 Honor, nor have I had a basis for the defense's request to
25 seal it.

1 If there is something specific in the transcript or
2 in the order that should be sealed, then maybe that should be
3 considered, but what's the basis?

4 MR. BIENENFELD: The basis is as follows. There
5 people who are following this case, that are blogging about
6 it, that are putting things on Instagram and Facebook and
7 Twitter and all the other sites about it. And they're lying,
8 quite frankly. They're making stuff up that doesn't follow
9 what the case is about, just to shame him and to embarrass
10 him.

11 Every time something is filed, my name gets out
12 there, his name gets out there and it's a lie. I can show the
13 court a video, but I don't think you'd be inclined to watch
14 it, about somebody in front of your courthouse who came in to
15 read the transcript and go ahead and report what the
16 transcript doesn't say actually.

17 So it's embarrassing to my client. It's upsetting.
18 It also is not -- I hate that the government has a bigger
19 case and more stuff is getting leaked out and the
20 government's best interest is to keep it sealed.

21 And I believe that there are some embarrassing
22 issues leaking out in terms of recovery, in terms of
23 Sexaholics Anonymous, in terms of Alcoholics Anonymous. And
24 for his own privacy and the privacy concern of his family I'm
25 requesting that it be sealed.

1 THE COURT: Well, just so I understand it from the
2 government, is there anything on the docket right now that's
3 sealed? I'm not talking about redactions. I mean, anything
4 that's sealed on the public docket?

5 MR. BIENENFELD: Yes.

6 THE COURT: Well, whoever -- I'll ask the
7 government first, but --

8 MR. SANDLAR: Yes, Your Honor. I do not have the
9 docket in front of me right now, but working off of memory I
10 don't believe that there's anything sealed that is on the
11 docket. The complaint was the only item that was sealed and
12 it was unsealed when the defendant was arrested.

13 MR. BIENENFELD: All my requests, travel requests
14 are sealed.

15 THE COURT: Okay. Well, look, at this point I'm
16 not going to order sealing, but if the defense wants to make
17 a motion, that would be heard by the assigned judge here, who
18 I believe is Judge Pollak, or the assigned bench duty judge
19 that day.

20 At this point though I'm not really in a position
21 to rule on what, if anything, should be sealed, especially
22 when there is -- you know, for these cases, unless there's a
23 legal basis for it, I appreciate that there's concerns about
24 embarrassment, but at the same time the complaint is
25 unsealed, the name public. It is a public docket.

1 MR. BIENENFELD: Can I ask for a two week sealing
2 and write my motion?

3 THE COURT: Well, again, this order, these
4 conditions are already unsealed. And they've been unsealed.
5 So I am not going to now seal something at this stage. Again,
6 the defendant can revisit that if they want to file a motion.
7 But at least as it stands now, and I checked earlier today,
8 it seems like at least the documents filed by the court were
9 not under seal.

10 All right. And, Felix, can I also have a copy also
11 of that.

12 MR. BIENENFELD: I don't have a --

13 THE COURT: Anything further?

14 MR. BIENENFELD: Yes, I don't have a good copy of
15 this. I'm missing the bottom.

16 THE CLERK: I'll email it.

17 MR. BIENENFELD: Okay.

18 THE COURT: Yes, and I will -- we will enter the
19 texts as well. I appreciate the -- there are those concerns
20 about sealing, but you know, we will make sure that -- if
21 there's issues with my handwriting, we'll make sure that gets
22 (indiscernible).

23 Okay. Anything further?

24 MS. CARLSON: One last point, Your Honor.

25 Sorry.

1 We would ask -- we would request that the court ask
2 the defendant's wife to be present for the next hearing,
3 whether that be by phone, or in person, being as she is the
4 sole surety on the bond. Conditions were changed. Namely,
5 the condition regarding her children.

6 THE COURT: Yes, that's -- I agree and in reality
7 the only thing I will order is that in addition, at minimum,
8 the copy that's provided should be shared with the suretor. I
9 believe the only suretor is his wife. So that should be
10 shared with her now, tonight.

11 But certainly, she should at least be available via
12 phone, although I would just advise -- I'm not sure who's on
13 duty on September 20th, but I would just ask counsel to check
14 with Felix or the magistrate judge clerical just to see what
15 the practice is of that magistrate judge regarding having the
16 individual appear in person.

17 I think given the circumstances, particularly where
18 there's childcare issues, I would imagine there would not be
19 an issue about allowing her to appear remotely via phone, but
20 I do think she needs to hear this, given that her name is
21 signed on the bond.

22 Okay. Anything further?

23 MR. SANDLAR: Not from the government, Your Honor.

24 MR. BIENENFELD: No.

25 THE COURT: All right. Thanks very much.

1 MR. SANDLAR: Thank you, Your Honor.

2 THE CLERK: Thank you.

3 (Proceedings concluded at 4:14 p.m.)

4 I, CHRISTINE FIORE, court-approved transcriber and
5 certified electronic reporter and transcriber, certify that
6 the foregoing is a correct transcript from the official
7 electronic sound recording of the proceedings in the above-
8 entitled matter.

9
10 

11 _____ September 24, 2024

12 Christine Fiore, CERT

13 Transcriber

14

15

16

17

18

19

20

21

22

23

24